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FSR COMMS & MEDIA

Florence School of Regulation

New digital threats to media pluralism in the information age

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Digital Platforms – The New Network Industries? How to regulate them?

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Outline

- **Platforms' business models ➢ new digital threats.**
- **The role of competition policy *vis-a-vis* new digital threats**
- **The Way Forward**

New Digital Threats

General definition of platforms

- Platforms are usually defined as **multi-sided markets.**

- Multi-sided markets are characterized by:

1) **Two or more groups of agents**;
2) Existence of **indirect network externalities** (i.e. the benefits accruing to an agent of one group increase with the number of the members of the other group);
3) **Agents are not able to internalize this indirect benefits** and, thereby, the need of a platform able to better coordinate them.

Competition in digital markets

- Digital markets appear to perform according to "**winner takes all**" or "**winners takes most**" dynamics, creating dominant companies or quasi monopolies.

- Evans and Schmalensee (2016) argue that "*network effects can create great value rapidly, but they can destroy it just as fast*".

- However, the majority of analysts agree that **competition in digital markets is primarily "for" the market** ➢ once a company achieves clear market leadership, it appears almost impossible to displace it from its dominant position in the market.

Digital platform's business models

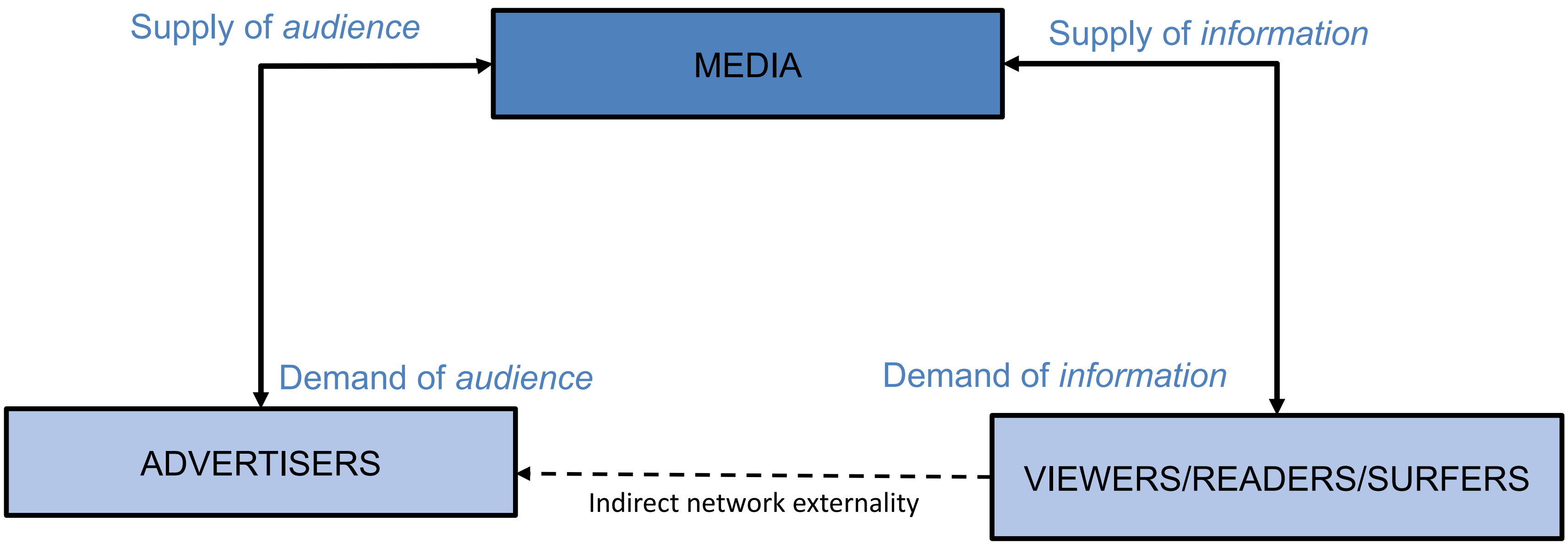
- Digital platforms can be divided in 3 categories, according to their business model:

1) Direct payment: the platform charges users for its service or product. Examples: Netflix, Amazon Marketplace, Apple; Microsoft.

2) **Advertisement model (focus of the presentation)**: platforms provide a service, while consumers provide revenues by being exposed to advertising. Moreover, by using consumers' personal data, the platform can improve the effectiveness of the advertising. Examples: Facebook, Google.

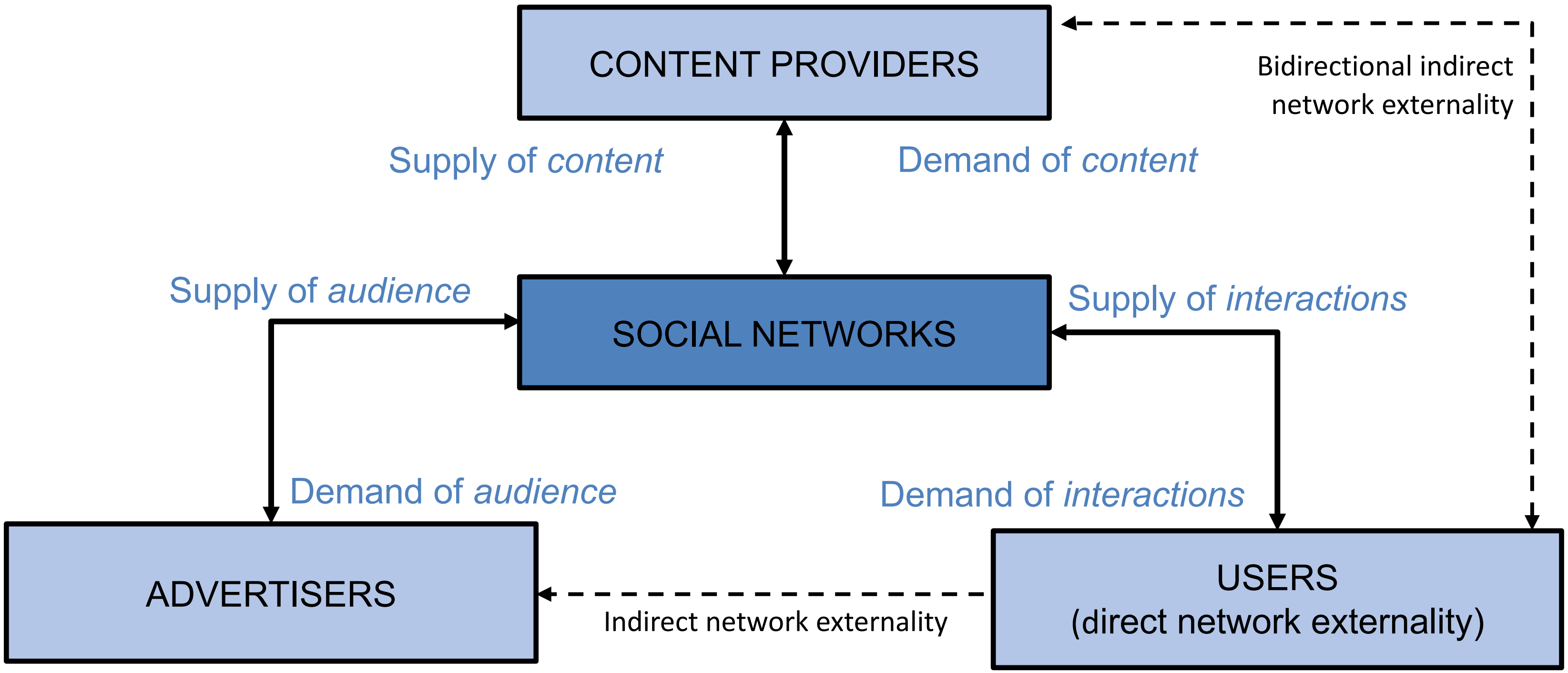
3) Access model: platforms connect app and content developers to the users. Example is Apple's App Store.

Traditional Media



Newspapers, TV channels, Web portals

Social Media

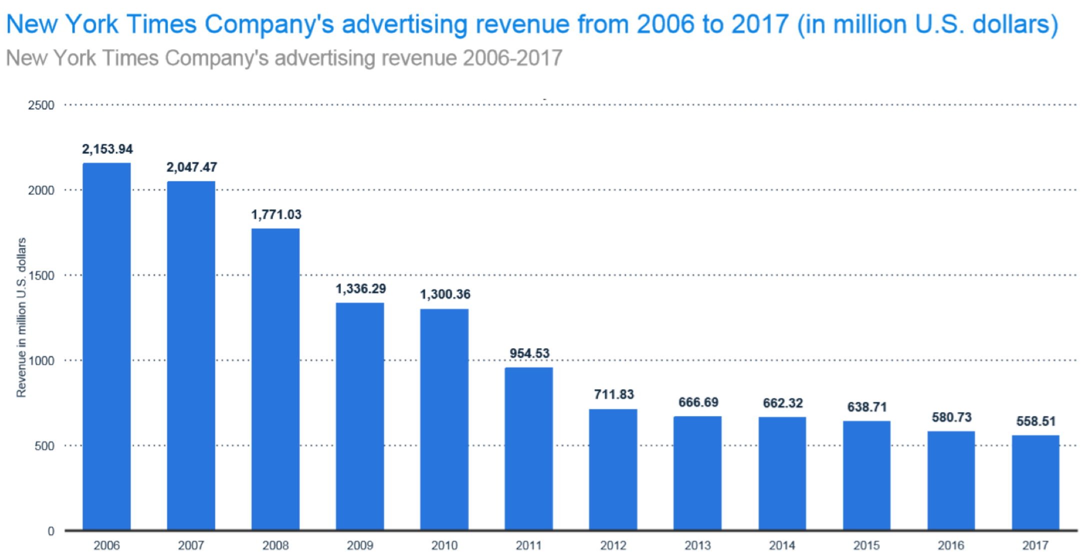


Facebook, Twitter, Instagram, YouTube

Digitalisation in media markets

- **Digitalisation negatively affects the 2 main sources of revenue of traditional media**:
1) sales to readers/viewers.
2) advertising revenues.

- Data reveals a **continuous migration of advertising towards the digital environment**: since 2016, Internet advertising revenues, mostly driven by mobile phones, have surpassed broadcasting TV revenues.
- In digital advertising, **Google and Facebook get the lion's share**: in 2017, they accounted for more than 60% of global online ad revenues
- The duopoly's share is even higher in European countries: in 2016, the 2 companies attracted over 70% of all digital advertising spending in UK.

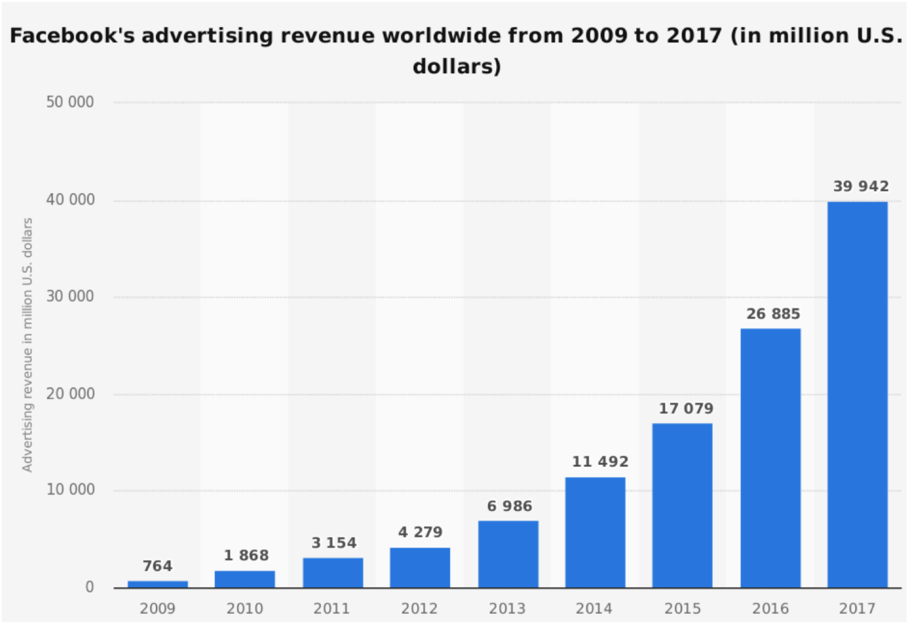


In 11 years NYT lost 1,6 millions of US dollars of advertising revenues

-74 %

In 8 years Facebook advertising revenue jumped up from 764 millions of US Dollars to about 40 billions

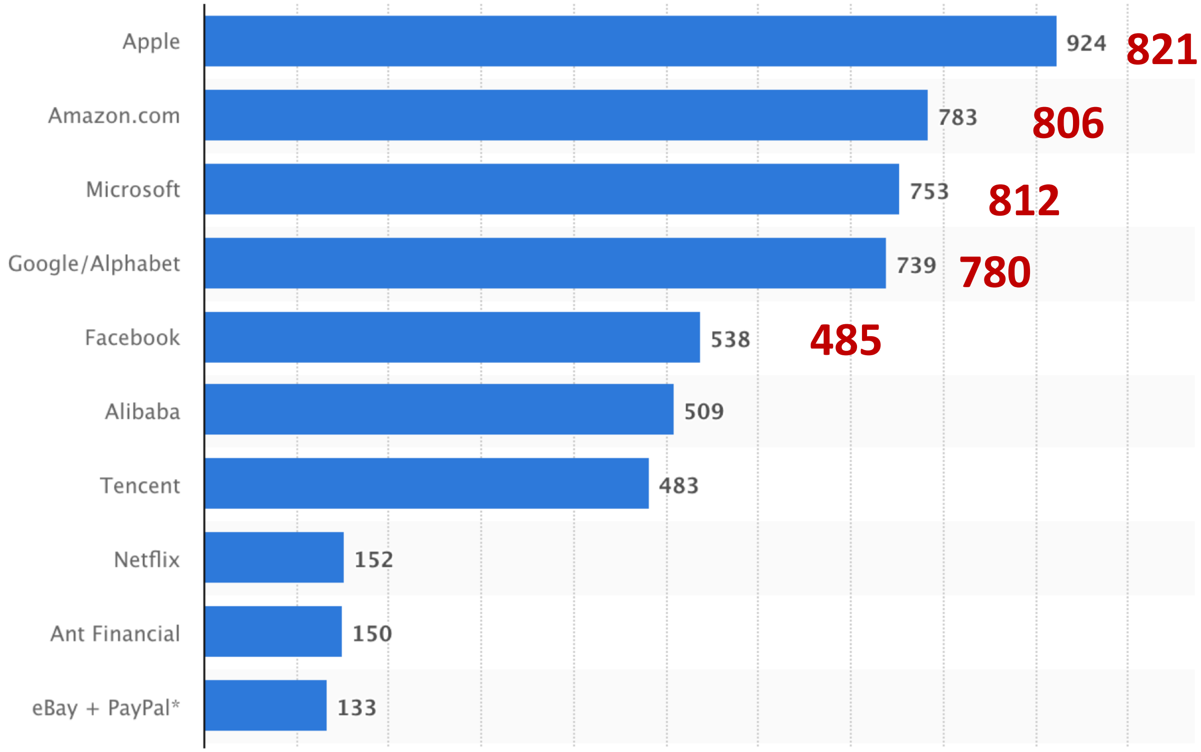
+5.128%



Source: Statista 2018

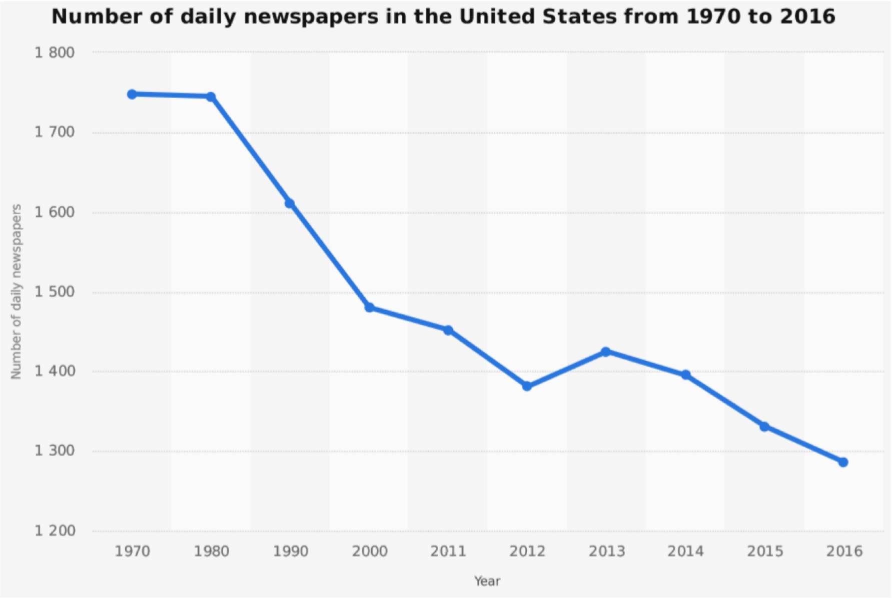
- These enterprises are the most valuable companies in the world in terms of market capitalization, a parameter that normally anticipates the future- **in red the most recent values**

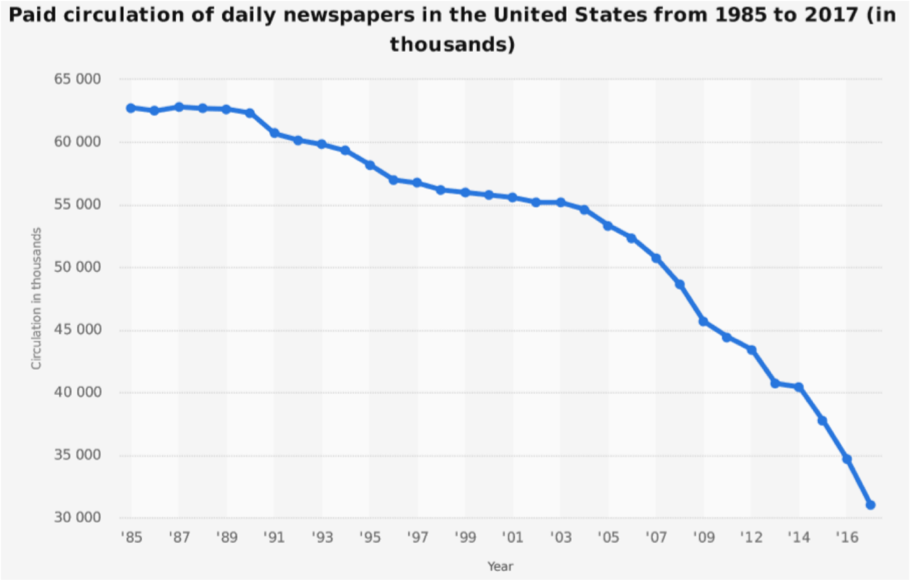
Market capitalization of the biggest internet companies worldwide - May 2018



Source: Statista 2018; billions of U.S. dollars

In the last decades more than 462 daily US newspaper closed **-26,4%**





In the last decades the circulation of paid US newspapers fell by 32 millions **-50.7%**

Source: Statista 2018; US Census Bureau data

New digital threats

- New ‘digital threats’ affect the ‘**plurality**’ of information:

1) Rise of a limited number of digital platforms.
2) Crisis of traditional media.

- New digital threats negatively affect the ‘**quality**’ of information: fake news, social bots, closed social media...

- ‘Plurality’ and ‘quality’ of information are closely linked:

in the information age, platforms act like ‘**digital gatekeepers**’.

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The role of competition policy

Competition policy and digital threats

- In principle, high degree of market concentration in social media could trigger the enforcement of competition policy:

1) *Ex-post*: sanctioning abuses by dominant digital platforms.
2) *Ex-ante*: merger control.

- Recent decisions by the *Bundeskartellamt* in the *Facebook* case and by the EU Commission decisions sanctioning *Google* are examples of the increasing attention of competition agencies *vis-à-vis* digital platforms.

- **Challenges** in the enforcement of competition policy *vis-à-vis* digital threats:

1) Goal of competition policy.
2) Multi-sided markets ➢ definition of the relevant market.
3) Theory of harm.

Goal of competition policy

- Competition policy traditionally safeguard the **consumers' welfare**: the difference between what consumers would have been willing to pay for a product and what actually they had to pay.
- Competition **policy traditionally sanctions only the anti-competitive practices that negatively affects the welfare of consumers**: e.g. price fixing cartel, exclusionary practices by dominant firms….
- **In digital markets:**

1) Competition is 'for' rather than 'in' the market ➢ once a platform becomes a *de facto* monopolist it can directly harm consumers, not only competitors.
2) Consumers receive a product 'for free'➢ competition based on product quality, rather than price = it is more difficult to assess the impact of an anti-competitive practice on consumers' welfare.

Alternative to consumers' welfare standard

- **Media plurality:**

1) Under Art. 21(4) Merger Control Reg., EU MS to may adopt 'appropriate measures' to safeguard the 'plurality of the media' in the area of merger control.
2) In a number of countries (e.g. USA, Brazil), the telecom NRA carries out an additional review of the concentrations, besides the NCA, to safeguard media plurality.

- **Problems with media plurality:**

1) Broad concept ➢ legal uncertainty.
2) Digital threats affects not only the plurality, but also the quality of information.

Definition of the relevant market

- Relevant market defined in terms of '**substitutability**' of different products for a hypothetical consumer.

- Small but Significant and Non Transitory Price Increase (**SSNIP**) test: analytical tool traditionally used to define the relevant market.

- **Digital platforms:**

1) **Multi-sided markets**: one side of the platform 'pays' for the services received 'for free' by the other side ➢ different 'sides' should be included in the same relevant market (e.g. US Supreme Court, *AmEx,* June 2017).

2) Consumers receive a digital service **'for free':** what is "small, but significant price increase" in a zero-price market?

Alternative tools to define the relevant market

Alternative tools follow a **similar logic as the SSNIP test**:

1) **SSNIC** (i.e. increase consumers' costs): + data / attention ➢ + consumers' costs.
2) **SSNDQ** (i.e. decline product quality): + data / attention ➢ - product quality.

Limits of the alternative tools in zero-price markets:

1) Quantification: +5% amount of personal data / attention?
2) Heterogeneous consumers' preferences: what type of data/attention should we take into consideration?
3) Positive effects: + data transferred can increase the product quality.
4) SSNIC and SSDQ do NOT catch multi-sided markets.

Theories of harm

- In abuse of dominance cases, the traditional theory of harm concerns **exclusionary practices**: the dominant firm tries to exclude competitors from the market ➢ consumers are negatively affected by the lower degree of competition in the market.

- **New digital threats and theories of harm:**

1) **Plurality of information**: digital markets are characterized by competition 'for' rather than 'in' the market ➢ dominant platform could be held liable ONLY if it actively tried to exclude competitors (e.g. *Google* cases) = NO *per se* prevention of market concentration?
2) **Quality of information**: are digital platforms liable for fake news and decreased quality of information on social media?

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The Way Forward

The Way Forward

- Digital markets are characterized by **two main threats**:

1) Decreased plurality of media: rise limited number of digital gatekeepers and crisis of traditional media

2) Decreased quality of information: fake news, social bots, closed social media...

- What is the role of competition policy in challenging digital threats?

The Way Forward

- In principle, the high degree of market concentration in digital markets could trigger the enforcement of competition policy (i.e. abuse of dominance and merger control).

- **BUT, a number of challenges remain open:**

1) **Goals**: broadening the goals of competition policy to safeguard media pluralism would negatively affect legal certainty and it would not solve the problems linked to the quality of information.
2) **Definition of the relevant market**: SSNIC/ SSNDQ are less reliable than SSNIP test.
3) **Theories of harm**: competition policy could only sanction exclusionary conducts that negatively affect the media plurality by dominant platform that try to exclude competitors, but not easily practices negatively affecting the quality of information.

The Way Forward

- Although competition policy seem *prima facie a possible way* to deal with new digital threats, there are a number of obstacles to its application.
- **Alternative solutions to digital threats:**

1) **Self-regulation** by the platforms (e.g. code of conducts against fake news).
2) **Binding legislation** to establish the platform liability in relation to the posted contents (i.e. *mutatis mutandis* new Copyright Directive concerning the platform liability for IP infringements).
3) States could **actively support traditional media** to ensure the plurality of media
4) Unless we move to a **new principle that forbids the creation or maintenance of dominant positions in the media markets**. This probably is very difficult but a first best!

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Many thanks for your attention!

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